IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 290 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

NITIN TRADING CO. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 24/11/2005

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1.The Income Tax Appellate Tribunal, Ahmedabad

Bench “A” has referred the following question under section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax:

> “Whether the Appellate Tribunal is right in law and on facts in holding that if the unpaid sales tax liability is paid before the time prescribed for submission of income tax return under section 139(1), the addition cannot be made invoking the provisions of section 43B?”

2. The Assessment Year is 1984-85 and the relevant accounting period is Samvat Year 2039.

3. Heard Mr.M.R.Bhatt, the learned senior standing counsel for the applicant revenue. Though served, there is no appearance on behalf of the respondent assessee.

4.Mr.Bhatt has very fairly drawn attention to the decision of the Supreme Court in the case of Allied Motors (P) Ltd. v. Commissioner of Income Tax, [1997] 224 ITR 677, to submit that the controversy involved in the present case stands concluded in favour of the assessee by the said decision. In the circumstances, it is not necessary to set out the facts and contentions in detail.

5.Applying the ratio of the aforesaid decision to the facts of the present case, it is held that the Tribunal was justified in holding that addition cannot be made by invoking the provisions of Section 43B of the Act if the unpaid sales tax liability is paid before the time prescribed for submission of the income tax return under section 139(1) of the Act. The question is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

6.The Reference stands disposed of accordingly, with no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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